IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 27182 of 2006(J)

PETITIONER:

KUNJURAMAN, S/O. O.KRISHNAN NAIR,
AGED 57 YEARS, EMPLOYED AS MANAGER,
CENTRAL BANK OF INDIA, CHELAVOOR, KOZHIKODE.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.M.R.SARIN
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.KIRAN SANKAR

RESPONDENTS:
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1. **CENTRAL BANK OF INDIA,**
   REP. BY ITS GENERAL MANAGER (PRS),
   CENTRAL BANK OF INDIA, CENTRAL OFFICE, MUMBAI.

2. **REGIONAL MANAGER,**
   CENTRAL BANK OF INDIA, REGIONAL OFFICE, COCHIN.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.PRIYA VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.27182/2006 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.K.DIS.285/93 EX-B5 DTD. 25.03.1995.**

EXT.P2: **COPY OF THE PAGE 3 OF THE PETITIONER'S SSLC BOOK.**

EXT.P3: **COPY OF THE APPLICATION DATED 05/09/2005.**

EXT.P4: **COPY OF THE LETTER DATED 23/08/2006.**

EXT.P5: **COPY OF THE JUDGMENT IN O.P.NO.12334/1998 DATED 04/03/2004.**

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): **COPY OF ORDER NO.CO.HRD-LEGAL:06-07:RKS:MISC-16/15:500 DATED 11/08/2006 ISSUED BY THE BANK.**

/TRUE COPY/

KSS

K.K. DENESAN, J.

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W.P.(C) No. 27182 OF 2006 J
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Dated this the 19th March, 2007

J U D G M E N T

The petitioner is a Branch Manager under the 1st respondent-Bank. He commenced service as Clerk on 12-10-1970. His date of birth is entered in the service records immediately on his commencement of service as Clerk. He was promoted to the higher categories and finally he holds the post of Branch Manager.

2. The date of birth as now entered in the service record is 7-9-1947. The petitioner applied for correction of date of birth in the S.S.L.C. book. That request was allowed in 1995. Hence, the date of birth as initially entered in the S.S.L.C. stands corrected as 15-3-1949. The entry in the service record was made based on the entry in the S.S.L.C. book as it stood on the date of commencement of the service of the petitioner. He filed an application before the respondents on 15-9-2005 for correction of date of birth in the service record as 15-3-1949.

3. The above request has been turned down by the respondents as per Ext. R2(a) order dated 11-8-2006 and

communicated to the petitioner as per Ext. P4 order. The reason stated in Ext. R2(a) is that the request for change of date of birth in the bank's record cannot be allowed at the fag end of the service career of the employee.

4. Going by the date of birth as now seen entered in the bank's record pertaining to the petitioner, he has to retire from service by the end of September, 2007. If the date is corrected, he need retire only on 31st March, 2009.

5. The only question for consideration is whether the rejection of the request of the petitioner on the ground that his belated request cannot be entertained, is legally sustainable.

6. I have heard counsel appearing for both parties.

7. In ***Burn Standard Co. Ltd.*** v. ***Dinabandhu Majumdar*** {AIR 1995 S.C. 1499} the Supreme Court, in paragraph 10 of the judgment, held as follows:

> "Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the

fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had

> grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement."

In the latest judgment of the Apex Court reported in ***State of Gujarat v. Vali Mohmed*** {2006(3) KLT S.N. 61, Case No. 83} it has been held that if no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The Apex Court had taken cognizance of the fact that in many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date

of birth in the service books and by that process, even if ultimately their applications are dismissed they will be able to continue in service on the strength of interim orders for months together.

8. As far as this case is concerned, the fact remains that the petitioner applied for correction of date of birth in the service record only after the lapse of 10 years even from the date of correction of the entry in the S.S.L.C. book. There is no explanation as to why he kept quiet for such a long period of time and has chosen to file the application towards the fag end of his service career. The entry was made as early as on 12-10-1970 and if delay is reckoned from that date, namely the date of commencement of his service and original entry in the service records, the delay would work out to greater length of time. Supreme Court has held unequivocally that the request for correction of date of birth shall have to be made as early as possible and at any rate within a reasonable time. Correction of the date of birth entry cannot be claimed as of right. I find no

warrant for this Court to hold that the stand taken by the employer that the application was belated and hence liable to be rejected is factually or legally wrong. The facts and circumstances justify the passing of Ext. R2(a). This has been explained by the respondents in the counter affidavit. No interference is called for. For the above reasons the writ petition is dismissed.

K.K. DENESAN
JUDGE

jan/